

SB 118 by Benacquisto (CO-INTRODUCERS) Evers; (Identical to H 0185) Funerals, Burials, and Memorial Services

203006	A	S	RCS	CJ, Dean	Delete L.15 - 26:	02/19 11:03 AM
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SB 338 by Simpson; (Identical to H 0191) Theft of Utility Services

SB 376 by Hays; (Identical to H 0731) Public Records/Children and Spouses of Law Enforcement Personnel

366616	A	S	FAV	CJ, Dean	Delete L.51:	02/19 11:05 AM
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CS/SB 390 by MS, Dean; Veterans' Organizations

153738	A	S	RCS	CJ, Dean	Delete L.15 - 42:	02/19 11:43 AM
803982	A	S	RS	CJ, Evers	btw L.42 - 43:	02/19 11:43 AM
899592	SA	S	RCS	CJ, Evers	btw L.42 - 43:	02/19 11:43 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Smith, Vice Chair

MEETING DATE: Tuesday, February 19, 2013

TIME: 9:30 —11:00 a.m.

PLACE: Mallory Horne Committee Room, 37 Senate Office Building

MEMBERS: Senator Evers, Chair; Senator Smith, Vice Chair; Senators Altman, Bradley, Dean, Gibson, and Simmons

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 118 Benacquisto (Similar H 15, S 240, Identical H 185)	Funerals, Burials, and Memorial Services; Prohibiting picketing or engaging in other protest activities within a specified distance of the property line of the location of a funeral, burial, or memorial service for certain persons; providing criminal penalties, etc. RI 01/24/2013 Favorable MS 02/06/2013 Favorable CJ 02/19/2013 Fav/CS	Fav/CS Yeas 7 Nays 0
2	SB 338 Simpson (Identical H 191)	Theft of Utility Services; Providing additional criminal penalties for utility services wrongfully taken; providing that the person who unlawfully took utility services is liable to the utility for an increased civil penalty subject to the amount of the utility services unlawfully obtained, etc. CU 02/05/2013 Favorable CJ 02/19/2013 Favorable ACJ AP	Favorable Yeas 7 Nays 0
3	SB 376 Hays (Identical H 731)	Public Records/Children and Spouses of Law Enforcement Personnel; Creating an exemption from public records requirements for the names of the spouses and children of active or former sworn or civilian law enforcement personnel, including children and spouses of correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement, etc. CJ 02/19/2013 Fav/1 Amendment GO RC	Fav/1 Amendment (366616) Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, February 19, 2013, 9:30 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 390 Military Affairs, Space, and Domestic Security / Dean	Veterans' Organizations; Prohibiting a business entity from holding itself out as a veterans' organization under certain circumstances; authorizing an affected veterans' organization to bring a civil action in a court of competent jurisdiction against the offending business entity; authorizing the court to impose a civil penalty of up to \$500 and payment of court costs and reasonable attorney fees; providing for criminal penalties, etc. MS 02/06/2013 Fav/CS CJ 02/19/2013 Fav/CS JU RC	Fav/CS Yeas 7 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 118

INTRODUCER: Criminal Justice Committee and Senators Benacquisto and Evers

SUBJECT: Funerals and Burials

DATE: February 19, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Favorable
2.	Spaulding	Ryon	MS	Favorable
3.	Cellon	Cannon	CJ	Fav/CS
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 118 provides that it is a misdemeanor of the first degree¹ to knowingly engage in a protest with the intent to interrupt or disturb a funeral or burial. The prohibited protest activities may not occur:

- Within 500 feet of the property line of any residence, cemetery, funeral home, house of worship, or other location, and
- During or within 1 hour before or 1 hour after the conducting of a funeral or burial at that place.

A first degree misdemeanor is punishable by a term of imprisonment not exceeding one year and a fine not to exceed \$1,000.

The bill defines “protest activities,” “funeral or burial,” and “funeral procession.”

¹ Section 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year. Section 775.083, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

This bill creates section 871.015, of the Florida Statutes.

II. Present Situation:

Demonstrations at Funerals

Rev. Fred Phelps, a minister from Topeka, Kansas, has been picketing military funerals and the funerals of AIDS victims across America.² He and family members of his congregation now often appear at military funerals with signs stating “God Hates You,” and “Thank God for Dead Soldiers.”³ The Phelps family’s premise for its protests is that the American war casualties are divine punishment for the country tolerating homosexuality.⁴ This same group threatened to picket the funerals of the 26 people, including 20 children, who were killed by a gunman at a Newtown, Connecticut elementary school on December 14, 2012.⁵

Florida Law Prohibiting Disturbances at Assemblies

Section 870.01, F.S., provides a first degree misdemeanor⁶ for a person to commit an affray. This section also provides a third degree felony⁷ for rioting, or inciting or encouraging a riot. Although the terms “affray” and “riot” are not defined, the courts have upheld the statute against vagueness challenges.⁸

Section 871.01(1), F.S., provides a misdemeanor of the second degree for willfully interrupting or disturbing any school or any assembly of people met for the worship of God or for any lawful purpose.⁹ This provision was challenged on appeal as being overly broad and therefore void. The Florida Supreme Court upheld the constitutionality of this provision in 1978, holding that the provision was not unconstitutional or overbroad.¹⁰ The Second District Court of Appeals has also upheld s. 871.01(1), F.S., as not unconstitutionally overbroad or vague.¹¹

Section 871.01(2), F.S., provides a first degree misdemeanor¹² penalty for anyone who willfully interrupts or disturbs an assembly of people who have met for the purpose of acknowledging the death of an individual with a military funeral honors detail pursuant to 10 U.S.C. s. 1491.

² “Targeting Protests at Military Funerals” *Capitol Hill Blue* (March 15, 2006).

³ “Military Funeral Protests Outrage Families, Lawmakers” *ABC News* (March 15, 2006).

⁴ “Constitutionality of Protest Ban At Issue” *Tallahassee Democrat* (April 7, 2006).

⁵ “Phelps’ Son Condemns Plan to Picket Newtown Funerals,” *The Washington Post* (December 17, 2012).

⁶ *Supra* n. 1.

⁷ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not exceeding five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not exceeding \$5,000.

⁸ *See D.L.B. v. State*, 707 So.2d 844, 845 (Fla. 2d DCA 1998) (statute sufficiently defines “affray,” given that “readily available dictionaries define “affray” as a public fight or brawl”); *State v. Beasley*, 317 So.2d 750, 753 (Fla. 1975) (upholding s. 870.01(2), F.S. as constitutional upon the court’s authoritative, limiting construction).

⁹ Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a term of imprisonment not exceeding 60 days. Section 775.083, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

¹⁰ *S.H.B. v. State*, 355 So. 2d 1176 (Fla. 1978).

¹¹ *State v. Sweet*, 616 So.2d 114 (Fla. 2nd DCA 1993).

¹² *Supra* n. 1.

Federal Law Prohibiting Disturbances at Military Funerals

Federal law prohibits persons to engage in a disruptive activity during the period beginning 60 minutes before and ending 60 minutes after a funeral for a member or former member of the Armed Forces that is not located at a cemetery under the control of the National Cemetery Administration or part of Arlington National Cemetery.¹³

The following activity is prohibited within the boundaries of the funeral's location or within 150 feet of the point of the intersection between the boundary of the location of such funeral, and a road, pathway, or other route of ingress to or egress from the location of such funeral:

Willfully making of any noise or diversion that is not part of such funeral and that disturbs or tends to disturb the peace or good order of such funeral with the intent of disturbing the peace or good order of that funeral.¹⁴

Within 300 feet of the boundary of the funeral's location, it is prohibited to willfully and without proper authorization impede "the access to or egress from such location with the intent to impede the access to or egress from such location."¹⁵

Persons who violate this prohibition may be subject to a fine or imprisonment of not more than one year, or both.¹⁶

Snyder v. Phelps

In *Snyder v. Phelps*,¹⁷ the U.S. Supreme Court addressed the First Amendment's relation to funeral protests. In March 2006, Westboro Baptist Church demonstrated near the funeral of Marine Lance Cpl. Matthew Snyder, who had been killed in Iraq. The demonstration included the display of signs reading "Thank God for Dead Soldiers," took place within 200-300 feet of the funeral procession, and concluded before the funeral began. Cpl. Snyder's father subsequently sued Phelps under state tort law, including a claim for intentional infliction of emotional distress. The jury found in favor of Snyder and awarded damages.

On appeal, the U.S. Supreme Court found that the First Amendment protected Phelps' speech because the speech took place in a public forum and the content was a matter of public concern. The Supreme Court also noted that, even though the speech in this case was protected, even protected speech "may be subject to reasonable time, place, or manner restrictions that are consistent with the standards announced in this Court's precedents."¹⁸

The *Snyder* case did not involve the constitutionality of a state statute regulating picketing. Rather, the Court addressed whether the First Amendment was a defense to a state tort claim for intentional emotional distress, which is a separate issue.

¹³ 18 U.S.C. s. 1388

¹⁴ 18 U.S.C. s. 1388(a)(1)

¹⁵ 18 U.S.C. s. 1388(a)(2)

¹⁶ 18 U.S.C. s. 1388(b)

¹⁷ *Snyder v. Phelps*, 131 S.Ct. 1207(2011).

¹⁸ *Id.* at 1218.

Military Funeral Honors for Veterans

Under federal law, the Secretary of Defense is directed to provide special military funeral honors for any deceased veteran¹⁹ when so requested by the veteran's family. The funeral honors detail must consist of at least two uniformed members of the armed forces, one of whom must be a member of the armed force of which the veteran was a member. At a minimum the detail shall perform the folding of the United States flag and its presentation to the family as well as the playing of Taps.²⁰

III. Effect of Proposed Changes:

The bill creates s. 871.015, F.S., to prohibit a person from knowingly engaging in or knowingly causing protest activities at a funeral or burial. The bill defines "protest activities" to mean "any action, including picketing, which is undertaken with the intent to interrupt or disturb a funeral or burial." The prohibited protest activities may not occur:

- Within 500 feet of the property line of any residence, cemetery, funeral home, house of worship, or other location, and
- During or within 1 hour before or 1 hour after the conducting of a funeral, burial, or memorial service at that place.

The bill specifically exempts funeral processions from the prohibitions in the bill if the procession extends beyond 500 feet of the property line of the location of the funeral or burial. The bill defines "funeral or burial" to mean "a service or ceremony offered or provided in connection with the final disposition, memorialization, internment, entombment, or inturnment of human remains or cremated human remains." A person who violates this section commits a misdemeanor of the first degree.

The prohibition created in s. 871.015, F.S., differs in several respects from the prohibitions in s. 871.01(2), F.S., and in 18 U.S.C. s. 1388. To violate s. 871.01(2), F.S., a person must interrupt or disturb a military funeral honors detail pursuant to 10 U.S.C. s. 1491. This bill encompasses all funerals or burials.

However, it appears that the facts or circumstances that would constitute a violation of s. 871.01(2), F.S., may also constitute a violation of the prohibition in this bill if the distance and time requirements in s. 871.015, F.S., are also met.

Similar conduct may also violate both s. 871.015, F.S., and 18 U.S.C. s. 1388. For example, the distance restriction in 18 U.S.C. s. 1388 is 300 feet from the location of the assembly. Such a distance would fall well within the 500 feet restriction in the bill.

¹⁹ A veteran is defined in Title 10 U.S.C. s. 1491(h) as a decedent who (1) served in the active military, naval, or air service, as defined in 38 U.S.C. s. 101(24), and who was discharged or released there from under conditions other than dishonorable; or (2) was a member or former member of the Selected Reserve described in 18 U.S.C. s. 2301(f).

²⁰ 10 U.S.C. s. 1491(b), (c).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

It is a fundamental constitutional principle that debate, particularly on issues of public concern, should not be inhibited by the government.²¹ Therefore, the most important question regarding the First Amendment issues of the bill is *whether the government is prohibiting speech based on disfavored content*.²² Such “content-based” regulations are presumptively suspect and are subject to strict scrutiny by the court.²³

On the other hand, the government *may* restrict speech through time, place, and manner regulations that are *justified without reference to the content of the speech*.²⁴ The Eighth Circuit Court of Appeals has found both a city ordinance²⁵ and a state statute²⁶ prohibiting protest activities within a certain time and distance of a funeral to be content-neutral.

Content-neutral restrictions are subject to intermediate scrutiny by the court.²⁷ Under intermediate scrutiny, the court looks at the relationship, or “fit” between the *end* and the *means* of the statute. In other words, the restrictions of the statute must be *narrowly tailored* to achieve a *significant state interest*.²⁸ Additionally, the statute must leave open “ample alternative channels” for the restricted speech.²⁹

- A significant *state interest* is grounded in the state’s traditionally broad police powers.³⁰ Courts have found a state has a significant interest in protecting its citizens from disruption during events associated with a funeral or burial service,³¹ and in

²¹ *Snyder*, 131 S.Ct. at 1215 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)).

²² *See Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

²³ *See Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 658 (1994).

²⁴ *See Ward*, 491 U.S. at 791 (emphasis added; internal quotations omitted); *Snyder*, 131 S.Ct. at 1218.

²⁵ *Phelps-Roper v. City of Manchester, Mo.*, 697 F.3d 678 (8th Cir. 2012).

²⁶ *Phelps-Roper v. Nixon*, 545 F.3d 685, 691 (8th Cir. 2008).

²⁷ *See Turner*, 512 U.S. at 642.

²⁸ *Ward*, 491 U.S. at 791.

²⁹ *Id.*

³⁰ *See Hill v. Colorado*, 530 U.S. 703, 715 (2000).

³¹ *Phelps-Roper v. Taft*, 523 F.Supp.2d 612, 618 (N.D. Ohio 2007) *aff’d in part sub nom. Phelps-Roper v. Strickland*, 539 F.3d 356 (6th Cir. 2008).

public safety concerns resulting from disruptions of the public order.³² Additionally, citizens have a recognized interest in avoiding unwanted speech, including in confrontational settings.³³

- A statute is *narrowly tailored* to a significant state interest if it does not burden substantially more speech than necessary to achieve the state’s goal.³⁴ To be narrowly tailored in this context, the statute does *not* have to be the least restrictive means available.³⁵
- In the context of a statute regulating picketing in residential areas, the U.S. Supreme Court found there were *ample alternative channels* when: “Protestors have not been barred from the residential neighborhoods. They may enter such neighborhoods, alone or in groups, even marching.... They may go door-to-door to proselytize their views. They may distribute literature in this manner ... or through the mails. They may contact residents by telephone, short of harassment.”³⁶

The bill limits the definition of “protest activities” as actions “undertaken with the intent to interrupt or disturb a funeral or burial.” The Sixth Circuit U.S. Court of Appeals found a statute was narrowly tailored that described protest activities as “any action that is disruptive or undertaken to disrupt or disturb a funeral or burial service.”³⁷ The court noted that the language limited “protest activities” to those *directed* at a particular funeral.³⁸ Furthermore, the Eighth Circuit U.S. Court of Appeals found that a statute that did *not* contain such language was likely *not* narrowly tailored for injunction purposes.³⁹

Regarding the distance restrictions in the bill, in 2007, the U.S. District Court for the Northern District of Ohio held an Ohio statute’s 300 feet “fixed” restriction surrounding funeral locations constitutional, but held the “floating buffer zone” surrounding funeral *processions* unconstitutional because it was not narrowly tailored.⁴⁰ That holding conforms to a prior Supreme Court case addressing buffer zones.⁴¹ Additionally, courts have found the *size* of the restricted area itself to be context-specific.⁴²

Regarding the bill’s prohibitions against protest activities, the First Amendment affords the highest protection to speech based on matters of public concern or “political speech.”⁴³ However, citizens also have a recognized interest not to be forced to hear

³² *Christian Knights of Ku Klux Klan Invisible Empire, Inc. v. Dist. of Columbia*, 972 F.2d 365, 372 (D.C. Cir. 1992) (citing *Mosley*, 408 U.S. at 98).

³³ *Hill* at 716-17.

³⁴ *See Turner*, 512 U.S. at 662.

³⁵ *Id. See also Hill*, 530 U.S. at 726.

³⁶ *Frisby v. Schultz*, 487 U.S. 474, 484 (1988).

³⁷ *Phelps-Roper v. Strickland*, 539 F.3d 356, 368 (6th Cir. 2008).

³⁸ *Id.* (citing *Frisby v. Schultz*, 487 U.S. 474 (1988)).

³⁹ *Phelps-Roper v. Nixon*, 545 F.3d 685, 693 (finding statute likely not narrowly tailored “[b]ecause the Missouri statute does not contain any such [narrowing] provisions”).

⁴⁰ *Phelps-Roper v. Taft*, 523 F.Supp.2d at 620 (N.D. Ohio 2007) (“statute not narrowly tailored, in that it burdens substantially more speech than necessary to serve the State of Ohio’s interest protecting its citizens from disruption during the events associated with a funeral or burial service”).

⁴¹ *See Schenck v. Pro-Choice Network of W. New York*, 519 U.S. 357, 377 (1997) (finding that injunction imposing floating buffer zones of 15 feet from people and vehicles entering and leaving clinics were not narrowly tailored).

⁴² *See Madsen*, 512 U.S. at 772; *Strickland*, 539 F.3d at 368.

⁴³ *See Snyder*, 131 S.Ct. at 1215.

unwanted speech.⁴⁴ Protecting citizens from hearing unwanted speech is referred to as the “captive audience” doctrine.⁴⁵ To illustrate the point, there is a difference between someone holding a sign displaying an offensive message, where the burden falls on offended viewers to “avoid further bombardment of their sensibilities simply by averting their eyes,”⁴⁶ and forcing citizens to “undertake Herculean efforts to escape the cacophony of political protests.”⁴⁷ The Supreme Court has held that in some cases, funeral attendees are not a “captive audience” to protest speech.⁴⁸ In other cases, courts have held that forcing a funeral attendee to choose between attending a funeral and hearing the unwanted protest communication effectively makes the attendees a “captive audience.”⁴⁹ The Supreme Court noted in *Snyder v. Phelps* that the captive audience doctrine has been applied “only sparingly.”⁵⁰

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁴⁴ See *Hill*, 530 U.S. at 716-17.

⁴⁵ *Snyder*, 131 S.Ct. at 1220.

⁴⁶ *Hill* at 716 (internal quotations omitted).

⁴⁷ *Id.* (quoting *Madsen*, 512 U.S. at 772-73).

⁴⁸ *Snyder*, 131 S.Ct. at 1220 (finding mourner was not a captive audience to protest speech when protestors stayed 1,000 feet away from the funeral location, mourner could only see the tops of the signs when driving to the funeral, and there was no indication that the picketing in any way interfered with the funeral service itself.”).

⁴⁹ See *Phelps-Roper v. Strickland*, at 362; *McQueary v. Stumbo*, 453 F.Supp.2d 975, 992 (E.D. Ky. 2006). But compare *Phelps-Roper v. Nixon*, 545 F.3d 685 (8th Cir. 2008).

⁵⁰ *Snyder*, 131 S.Ct. at 1220.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 19, 2013:

- Provides definitions for the terms “funeral or burial,” “funeral procession,” and “protest activities.”
- Deletes references in the bill to memorial services, limiting the application of the bill to funerals or burials.
- Deletes the specificity in the bill which limited its application to services honoring only certain people.
- Eliminates the language “action that *is disruptive*...to...a funeral” and replaces it with “action...which is *undertaken with the intent to interrupt or disrupt* a funeral.” This change has the effect of focusing on the *intent of the actor* rather than the *response of someone who is offended*.

- B. **Amendments:**

None.



203006

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2013	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 15 - 26
and insert:

(1) As used in this section, the term:

(a) "Funeral or burial" means a service or ceremony offered or provided in connection with the final disposition, memorialization, internment, entombment, or inurnment of human remains or cremated human remains.

(b) "Funeral procession" has the same meaning as provided in s. 316.1974.

(c) "Protest activities" means any action, including



203006

picketing, which is undertaken with the intent to interrupt or disturb a funeral or burial.

(2) A person may not knowingly engage in protest activities or knowingly cause protest activities to occur within 500 feet of the property line of a residence, cemetery, funeral home, house of worship, or other location during or within 1 hour before or 1 hour after the conducting of a funeral or burial at that place. This subsection does not prohibit protest activities that occur adjacent to that portion of a funeral procession which extends beyond 500 feet of the property line of the location of the funeral or burial.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 2 - 7

and insert:

An act relating to funerals and burials; creating s. 871.015, F.S.; providing definitions; prohibiting engaging in protest activities within a specified distance of the property line of the location of a funeral or burial; providing an exception; providing

By Senator Benacquisto

30-00168-13

2013118__

1 A bill to be entitled
 2 An act relating to funerals, burials, and memorial
 3 services; creating s. 871.015, F.S.; providing a
 4 definition; prohibiting picketing or engaging in other
 5 protest activities within a specified distance of the
 6 property line of the location of a funeral, burial, or
 7 memorial service for certain persons; providing
 8 criminal penalties; providing an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Section 871.015, Florida Statutes, is created to
 13 read:
 14 871.015 Unlawful protests.—
 15 (1) As used in this section, the term "other protest
 16 activities" means any action that is disruptive or that is
 17 undertaken to disrupt or disturb a funeral, burial, or memorial
 18 service.
 19 (2) A person may not knowingly picket or engage in other
 20 protest activities or knowingly cause picketing or other protest
 21 activities to occur within 500 feet of the property line of a
 22 residence, cemetery, funeral home, house of worship, or other
 23 location during or within 1 hour before or 1 hour after the
 24 conducting at such places of a funeral or burial of, or a
 25 memorial service for, a military service member, an emergency
 26 response worker, an elected official, or a minor.
 27 (3) A person who violates this section commits a
 28 misdemeanor of the first degree, punishable as provided in s.
 29 775.082 or s. 775.083.

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30-00168-13

2013118__

30 Section 2. This act shall take effect October 1, 2013.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/13

Meeting Date

Topic FUNERALS, BURIALS, MEMORIALS

Bill Number SB 118

(if applicable)

Name MIKE PRENDERGAST

Amendment Barcode

(if applicable)

Job Title EXECUTIVE DIRECTOR FDVA

Address THE CAPITOL

Phone 850-487-1533

Street

City

State

Zip

E-mail

Speaking: ☒ For ☐ Against ☐ Information

Representing FDVA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S 001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/13

Meeting Date

Topic Funerals, Burials & Memorials

Bill Number 118
(if applicable)

Name Corinne Mixon

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 119 East Park Ave
Street

Phone (850) 766-5795

Tallahassee FL 32308
City State Zip

E-mail corinnemixon@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Independent Funeral Directors of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 338

INTRODUCER: Senator Simpson

SUBJECT: Theft of Utility Services

DATE: February 6, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Favorable
2.	Erickson	Cannon	CJ	Favorable
3.			ACJ	
4.			AP	
5.				
6.				

I. Summary:

SB 338 amends s. 812.14, F.S., to provide that thefts of utility services are punishable as theft under s. 812.014, F.S., the general theft statute. As a result of this change, a person who commits theft of utility services will not necessarily commit a first degree misdemeanor (the current degree of offenses under s. 812.14, F.S.). Under s. 812.014, F.S., the offense degree and penalties relevant to a theft depend upon the value of the property (which includes services) stolen and other factors, if relevant, such as whether the theft is a first offense (relevant to petit theft).

The bill also increases the civil penalty for a person found in a civil action to have violated the statute on utility theft from the current three times the amount of services stolen or \$1,000, whichever is greater, to three times the amount stolen or \$3,000, whichever is greater.

The bill takes effect October 1, 2013.

This bill substantially amends section 812.14 of the Florida Statutes.

II. Present Situation:

Utility Theft

Section 812.14, F.S., prohibits and punishes theft of utility services. The term “utility” is defined to include any person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or

delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or telecommunication service.

Section 812.14(2)(a), F.S., provides that it is unlawful to willfully alter, tamper with, injure, or knowingly suffer to be injured any meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility line service in such a manner as to cause loss or damage or to prevent any meter installed for registering electricity, gas, or water from registering the quantity which otherwise would pass through the same; to alter the index or break the seal of any such meter; in any way hinder or interfere with the proper action or just registration of any such meter or device; or knowingly use, waste, or suffer the waste, by any means, of electricity or gas or water passing through any such meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging to any such utility, after such meter, wire, pipe or fitting, or other appliance or appurtenance has been tampered with, injured, or altered.

Section 812.14(2)(b), F.S., provides that it is unlawful to make or cause to be made any connection with any wire, main, service pipe or other pipes, appliance, or appurtenance in such manner as to use, without the consent of the utility, any service or any electricity, gas, or water, or to cause to be supplied any service or electricity, gas, or water from a utility to any person, firm, or corporation or any lamp, burner, orifice, faucet, or other outlet whatsoever, without such service being reported for payment or such electricity, gas, or water passing through a meter provided by the utility and used for measuring and registering the quantity of electricity, gas, or water passing through the same.

Section 812.014(2)(c), F.S., provides that it is unlawful to use or receive the direct benefit from the use of a utility knowing, or under such circumstances as would induce a reasonable person to believe, that such direct benefits have resulted from any tampering with, altering of, or injury to any connection, wire, conductor, meter, pipe, conduit, line, cable, transformer, amplifier, or other apparatus or device owned, operated, or controlled by such utility, for the purpose of avoiding payment.

Section 812.14(4), F.S., provides that a willful violation of s. 812.14(2)(a), (b), or (c), F.S., is a first degree misdemeanor.¹

Section 812.14(5), F.S., provides that it is unlawful for a person or entity that owns, leases, or subleases a property to permit a tenant or occupant to use utility services knowing, or under such circumstances as would induce a reasonable person to believe, that such utility services have been connected in violation of s. 812.14(2)(a), (b), or (c), F.S.

Section 812.14(7), F.S., provides that a willful violation of s. 812.14(5), F.S., is a first degree misdemeanor. Prosecution for a violation of s. 812.14(5), F.S., does not preclude prosecution for theft under s. 812.14(8), F.S. (described, *supra*) or s. 812.014, F.S.

¹ A first degree misdemeanor is punishable by up to a year in jail, a fine of up to \$1,000, or both. Sections 775.082 and 775.083, F.S.

Section 812.14(8), F.S., provides that it is a first degree misdemeanor to commit theft of utility services for the purpose of facilitating the manufacture of a controlled substance.

Section 812.14(10), F.S., provides that whoever is found in a civil action to have violated the provisions of s. 812.14, F.S., is liable to the utility involved in an amount equal to three times the amount of services unlawfully obtained or \$1,000, whichever is greater.

General Theft

Section 812.014, F.S., is the general theft statute. The offense degree of theft depends upon the value of the property (which includes services) stolen and other factors, if relevant, such as whether the theft is a first offense (relevant to petit theft). As offense degree increases, so do the range and severity of penalties. The statute provides, in part, that it is:

- A first degree felony if the property stolen is valued at \$100,000 or more (grand theft in the first degree).²
- A second degree felony if the property stolen is valued at \$20,000 or more, but less than \$100,000 (grand theft in the second degree).³
- A third degree felony if the property stolen is valued at \$300 or more, but less than \$20,000 (grand theft of the first degree).⁴
- A third degree felony if the property stolen is valued at \$100 or more, but less than \$300, and is taken from a dwelling or from the unenclosed curtilage of a dwelling (grand theft of the third degree).⁵
- Excluding third degree felony theft involving a dwelling, a first degree misdemeanor if the property stolen is valued at \$100 or more, but less than \$300 (petit theft of the first degree).⁶
- A second degree misdemeanor if theft of property does not involve any of the other thefts described (petit theft of the second degree).⁷
- A first degree misdemeanor if a person who commits petit theft has previously been convicted of any theft.⁸
- A first degree misdemeanor if a person who commits petit theft has previously been convicted two or more times of any theft.⁹

² Section 812.014(2)(a)1., F.S. A first degree felony is generally punishable by up to 30 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

³ Section 812.014(2)(b)1., F.S. A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

⁴ Section 812.014(2)(c)1.-3., F.S. Theft is a third degree felony if the property stolen is valued at \$3000 or more, but less than \$5,000; 5,000 or more, but less than \$10,000; or \$10,000 or more but less than \$20,000. What distinguishes these thefts is not their offense degree but their ranking in the offense severity ranking chart of the Criminal Punishment Code (s. 921.0022, F.S.). A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

⁵ Section 812.014(2)(d), F.S.

⁶ Section 812.014(2)(e), F.S.

⁷ Section 812.014(3)(a), F.S. A second degree misdemeanor is punishable by up to 60 days in jail, a fine of up to \$500, or both. Sections 775.082 and 775.083, F.S.

⁸ Section 812.014(3)(b), F.S.

⁹ Section 812.014(3)(c), F.S.

- A second degree felony if a person individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing theft under s. 812.014, F.S., where the stolen property has a value in excess of \$3,000.¹⁰

III. Effect of Proposed Changes:

The bill amends s. 812.14, F.S., to provide that thefts of utility services are punishable as theft under s. 812.014, F.S., the general theft statute. As a result of this change, a person who commits theft of utility services will not necessarily commit a first degree misdemeanor (the current degree of offenses under s. 812.14, F.S.). By providing that utility theft is punishable under s. 812.014, F.S., the general theft statute, the offense degree and penalties relevant to the theft depend upon the value of the property (which includes services) stolen and other factors, if relevant, such as whether the theft is a first offense (relevant to petit theft).

For those utility theft cases that constitute a felony, repeat offender sanctions under ss. 775.082 and 775.084, F.S., may be available if the offender has a qualifying prior conviction or convictions.

The bill does not amend s. 812.14 (5) and (7), F.S. Section 812.14(5), F.S., provides that it is unlawful for a person or entity that owns, leases, or subleases a property to permit a tenant or occupant to use utility services knowing, or under such circumstances as would induce a reasonable person to believe, that such utility services have been connected in violation of s. 812.14(2)(a), (b), or (c), F.S.

Section 812.14(7), F.S., provides that a willful violation of s. 812.14(5), F.S., is a first degree misdemeanor. Prosecution for a violation of s. 812.14(5), F.S., does not preclude prosecution for theft under s. 812.14(8), F.S. (which the bill provides is punishable under s. 812.014, F.S.) or s. 812.014, F.S. Consequently, under the bill, if a person is convicted of a violation of s. 812.014(5), F.S., the person commits a first degree misdemeanor but prosecution under this subsection does not preclude prosecution under s. 812.14(8), F.S., or s. 812.014, F.S., which has the potential for greater punishment.

The bill also increases the civil penalty for a person found in a civil action to have violated the statute on utility theft from the current three times the amount of services stolen or \$1,000, whichever is greater, to three times the amount stolen or \$3,000, whichever is greater.

The bill takes effect October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not impact municipalities and counties under the requirements of Article VII, Section 18, of the Florida Constitution.

¹⁰ Section 812.014(6), F.S.

B. Public Records/Open Meetings Issues:

The bill does not raise public records or open meetings issues under the requirements of Article I, Section 24(a) and (b), of the Florida Constitution.

C. Trust Funds Restrictions:

The bill does not impact trust fund restrictions under the requirements of Article III, Section 19(f), of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By linking utility theft under s. 812.14, F.S., to the punishments provided for theft under s. 812.014, F.S., the punishment for the utility theft may be greater than provided under s. 812.14, F.S. (first degree misdemeanor), depending upon the facts and circumstances of the case (most importantly, the value of the property stolen). This change to the law may dissuade some persons from engaging in theft of utility services from private utility service providers. Also, the increased civil penalty should better compensate these providers and their customers for the losses to theft than the current civil penalty.

C. Government Sector Impact:

The changes the bill makes to punish utility theft may dissuade some persons from engaging in theft of utility services from government-owned utility service providers. Also, the increased civil penalty should better compensate these providers and their customers for the losses to theft than the current civil penalty.

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation had not convened at the time this analysis was completed. However, the Legislature's Office of Economic and Demographic Research (EDR) states that it will probably recommend to the CJIC that the bill is likely to have an insignificant prison bed impact.

The EDR states that the Florida Department of Law Enforcement (FDLE) found 73 guilty and 43 adjudication withheld counts in the Computerized Criminal History database for FY 2001-12.¹¹

¹¹ The FDLE states that the CCH is fingerprint-based and, unless prints were taken at a later stage in the criminal justice process, does not include records involving a notice to appear, direct files, or sworn complaints where no physical arrest was made. The FDLE does not warrant that the records provided are comprehensive or accurate as of the date they are provided, it only warrants that they contain information received by the FDLE from contributing agencies, and that any errors or omissions brought to the FDLE's attention are investigated and, as needed, corrected. Caution should be used in making conclusions about the data provided. The CCH data is as of February 1, 2013.

The EDR provides the following information regarding incarceration rates for petit theft (3rd conviction) and the four theft levels in FY 2011-12:

Petit theft, 3rd conviction:	15.2%
Grand theft, \$ 300 - \$4,999:	10.4%
Grand theft, \$ 5,000 - \$9,999:	9.2%
Grand theft, \$10,000-\$19,999:	17.6%
Grand theft, \$20,000-\$99,999:	32.0%

The preliminary EDR estimate assumes that few of the utility thefts would fall in the higher dollar amount ranges for theft and most of the theft offenses would be at lower levels (e.g., 17% of the sentencing events for the five previously-noted theft offenses were for petit theft (3rd conviction) and 73% were for the \$300 to \$4,999 level).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Simpson

18-00219-13

2013338__

1 A bill to be entitled
 2 An act relating to theft of utility services; amending
 3 s. 812.14, F.S.; providing additional criminal
 4 penalties for utility services wrongfully taken;
 5 providing that the person who unlawfully took utility
 6 services is liable to the utility for an increased
 7 civil penalty subject to the amount of the utility
 8 services unlawfully obtained; providing an effective
 9 date.
 10
 11 Be It Enacted by the Legislature of the State of Florida:
 12
 13 Section 1. Subsections (4), (7), (8), and (10) of section
 14 812.14, Florida Statutes, are amended to read:
 15 812.14 Trespass and larceny with relation to utility
 16 fixtures; theft of utility services.—
 17 (4) A ~~Any~~ person who willfully violates paragraph (2)(a),
 18 paragraph (2)(b), or paragraph (2)(c) commits theft ~~a~~
 19 ~~misdemeanor of the first degree~~, punishable as provided in s.
 20 812.014 ~~s. 775.082 or s. 775.083~~.
 21 (7) A person who willfully violates subsection (5) commits
 22 a misdemeanor of the first degree, punishable as provided in s.
 23 775.082 or s. 775.083. Prosecution for a violation of subsection
 24 (5) does not preclude prosecution for theft pursuant to ~~under~~
 25 subsection (8) or s. 812.014.
 26 (8) Theft of utility services for the purpose of
 27 facilitating the manufacture of a controlled substance is theft
 28 ~~a misdemeanor of the first degree~~, punishable as provided in s.
 29 812.014 ~~s. 775.082 or s. 775.083~~.

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

18-00219-13

2013338__

30 (10) Whoever is found in a civil action to have violated
 31 ~~the provisions of~~ this section is liable to the utility involved
 32 in an amount equal to 3 times the amount of services unlawfully
 33 obtained or \$3,000 ~~\$1,000~~, whichever is greater.
 34 Section 2. This act shall take effect October 1, 2013.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/13

Meeting Date

Topic Utility Theft

Bill Number 338
(if applicable)

Name Melanie Dimuzio

Amendment Barcode _____
(if applicable)

Job Title Grassroots Coordinator

Address 106 E. College Ave Suite 800

Phone 850-222-8738

Tallahassee, FL 32303
Street City State Zip

E-mail melanie.dimuzio@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Progress Energy Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/13

Meeting Date

Topic Utility Theft

Bill Number 338
(if applicable)

Name John Holley

Amendment Barcode _____
(if applicable)

Job Title _____

Address _____
Street

Phone _____

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Power & Light

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/13
Meeting Date

Topic Utility Theft

Bill Number SB 338
(if applicable)

Name Amy Zubaly

Amendment Barcode _____
(if applicable)

Job Title Director of Public Affairs

Address 417 E. College Ave

Phone 850-224-3314

Tallahassee FL 32301
City State Zip

E-mail azubaly@publicpower.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Municipal Electric Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19

Meeting Date

Topic UTILITY THEFT

Bill Number 338
(if applicable)

Name MIKE BJORKLUND

Amendment Barcode _____
(if applicable)

Job Title DIR. OF. LEGISLATIVE AFFAIRS

Address 2916 APALACHEE PKWY

Phone 877-6166

Street

ALL

City

State

32301

Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing FECA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-19-2013

Meeting Date

Topic Theft of Utility Service

Bill Number 338
(if applicable)

Name Donna Simmons

Amendment Barcode _____
(if applicable)

Job Title Dir, State Gov't Relations

Address 106 E College Ave
Street

Phone _____

TLH FL 32312
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information (Waive in support)

Representing TECO Energy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-19-13

Meeting Date

Topic THEFT OF UTILITY SERVICES

Bill Number 338
(if applicable)

Name CARL PUNYKO

Amendment Barcode _____
(if applicable)

Job Title GOV. AFFAIRS MGR

Address GULF POWER
Street

Phone 850-712-0692

City

State

Zip

E-mail CAPUNYKO@SOUTHERNACO.COM

Speaking: ☒ For ☐ Against ☐ Information

WAIVE IN SUPPORT

Representing GULF POWER

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, *Chair*
Appropriations Subcommittee on General
Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Commerce and Tourism
Communications, Energy, and Public Utilities
Environmental Preservation and Conservation

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR WILTON SIMPSON

18th District

February, 5th 2013

Senator Greg Evers, Chairman
Senate Criminal Justice Committee
510 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Senator Evers,

Please place Senate Bill 338, relating to theft of utility services on the next Criminal Justice Committee agenda.

Please contact my office with any questions.

Senator Wilton Simpson, 18th District

A handwritten signature in dark ink, appearing to be "W. Simpson", written over a horizontal line.

REPLY TO:

- ☐ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- ☐ Post Office Box 938, Brooksville, Florida 34605
- ☐ Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 376

INTRODUCER: Senator Hays

SUBJECT: Public Records Exemption/Names of Spouses & Children of Law Enforcement & Other Specified Agency Personnel

DATE: February 8, 2013

REVISED: 02/19/13

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/1 amendment
2.			GO	
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input checked="" type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

SB 376 expands a public records exemption in s. 119.071(4)(d), F.S., which protects from public disclosure certain personal and identifying information of specified agency personnel and their spouses and children. The newly expanded exemption will include the names of spouses and children of active or former sworn or civilian law enforcement personnel, including Department of Corrections (DOC) officers and correctional probation officers, Department of Children and Families (DCF) abuse and exploitation investigators, Department of Health (DOH) child abuse investigators, and Department of Revenue (DOR) collection and enforcement personnel. The exemption is subject to legislative review and repeal under the provisions of the Open Government Sunset Review Act. The bill also contains a statement of public necessity as required by the State Constitution.

Because this bill expands a public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.

This bill substantially amends section 119.071 of the Florida Statutes.

II. Present Situation:

Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24 of the State Constitution, provides that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,³ which pre-dates the public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency.⁴ Section 119.07(1)(a), F.S., states:

(a) Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term “public record” is broadly defined to mean:

. . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate,

¹ Section 1390, 1391 F.S. (Rev. 1892).

² Article I, s. 24, Fla. Constitution.

³ Chapter 119, F.S.

⁴ The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.

⁵ Section 119.011(12), F.S.

communicate, or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

Only the Legislature is authorized to create exemptions to open government requirements.⁸ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁹ A bill enacting an exemption¹⁰ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹¹

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹² If a record is simply made exempt from disclosure requirements then an agency is not prohibited from disclosing the record in all circumstances.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹⁴ provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.¹⁵

The Act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, whose administration would be significantly impaired without the exemption;

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁷ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁸ Article I, s. 24(c), Fla. Constitution.

⁹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

¹⁰ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹¹ Art. I, s. 24(c), Fla. Constitution.

¹² Attorney General Opinion 85-62.

¹³ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹⁴ Section 119.15, F.S.

¹⁵ Section 119.15(5)(a), F.S.

- Protects information of a sensitive, personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁶

The Act also requires the Legislature to consider six questions that go to the scope, public purpose, and necessity of the exemption.¹⁷

Current Exemptions Relating to Agency Personnel in s. 119.071(4)(d), F.S.

Section 119.071(4)(d), F.S., currently provides public records exemptions for specified personal identifying and locating information of the following current and former agency personnel, as well as for specified personal identifying and locating information of their spouses and children, including the following:

- Law enforcement and specified agency investigative personnel;¹⁸
- Certified firefighters;
- Justices and judges;
- Local and statewide prosecuting attorneys;
- Magistrates, administrative law judges, and child support hearing officers;
- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad litem;
- Department of Juvenile Justice direct-care personnel;
- Public defenders and criminal conflict and civil regional counsel;
- Department of Business and Professional Regulation investigators and inspectors; and
- County tax collectors.

¹⁶ Section 119.15(4)(b), F.S.

¹⁷ Section 119.15(6)(a), F.S. These questions are as follows:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁸ Included in this category are the following: active or former sworn or civilian law enforcement personnel, including DOC officers and correctional probation officers, DCF abuse and exploitation investigators, DOH child abuse investigators, and DOR collection and enforcement personnel.

Although there is some inconsistency among the types of information exempted,¹⁹ all of the exemptions protect the following information:

- The home addresses and telephone numbers of the agency personnel;
- The home addresses, telephone numbers, and places of employment of the spouses and children of the agency personnel; and
- The names and locations of schools and day care facilities attended by the children of the agency personnel.

Six of the exemptions protect the names of the following agency personnel's spouses and children:

- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad Litem;
- Department of Juvenile Justice direct-care personnel;
- Department of Business and Professional Regulation inspectors and investigators; and
- County tax collectors.

III. Effect of Proposed Changes:

This bill expands the public records exemption in s. 119.071(4)(d), F.S., which protects from public disclosure certain personal and identifying information of specified agency personnel and their spouses and children. The newly expanded exemption will include the names of spouses and children of active or former sworn or civilian law enforcement personnel, including DOC officers and correctional probation officers, DCF abuse and exploitation investigators, DOH child abuse investigators, and DOR collection and enforcement personnel. (There are currently six other exemptions in this section that protect the names of spouses and children.)

The exemption is subject to legislative review and repeal under the provisions of the Open Government Sunset Review Act and as such, stands repealed October 2, 2018, unless reviewed and saved from repeal by reenactment of the Legislature.

The bill also contains a statement of public necessity as required by the State Constitution. It provides that the exemption is necessary to protect these sworn and civilian law enforcement personnel and other specified agency investigative personnel who because of their job responsibilities often come into close contact with persons who want to harm them or their families. The public necessity statement further provides that the resulting harm from releasing the names of spouses and children outweighs the public benefit of disclosing them.

¹⁹ Some of the exemptions also protect photographs, dates of birth, and names of agency personnel and their spouses and children.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:**Vote Requirement**

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to pass by a two-thirds vote of the members present and voting in each house. Because this bill expands a public records exemption, a two-thirds vote is required.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain a public necessity statement. Because this bill expands a public records exemption, it does contain a public necessity statement.

Single Subject Requirement

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain no other substantive provisions. Because this bill expands a public records exemption, it does not contain other substantive provisions.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill expands a public records exemption by including the names of spouses and children of specified agency personnel in the existing exemption that protects certain personal and identifying information. The public necessity statement provides that the exemption is necessary to protect those sworn and civilian law enforcement personnel and other specified investigative agency personnel who because of their job responsibilities often come into close contact with persons who want to harm them or their families. The public necessity statement further provides that the harm of releasing the names of spouses and children outweighs the public benefit of disclosing them.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to correspondence received from the First Amendment Foundation dated February 18, 2013, the Foundation states that exempting this information from the public eye effectively eliminates public oversight and governmental accountability. The Foundation recommends that the exemption be narrowed significantly or not enacted into law.²⁰

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 366616 by Criminal Justice on February 19, 2013:

Clarifies that the other specified agency personnel besides law enforcement that are covered in the current exemption are also included in the expanded exemption.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁰ See copy of email from the First Amendment Foundation to the sponsor of the bill, dated February 18, 2013, on file with the Senate Criminal Justice Committee .



366616

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/19/2013	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment

Delete line 51
and insert:
former sworn or civilian law enforcement personnel and the other
specified agency personnel identified in

By Senator Hays

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1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; creating an exemption from public
 4 records requirements for the names of the spouses and
 5 children of active or former sworn or civilian law
 6 enforcement personnel, including children and spouses
 7 of correctional and correctional probation officers,
 8 personnel of the Department of Children and Families
 9 whose duties include the investigation of abuse,
 10 neglect, exploitation, fraud, theft, or other criminal
 11 activities, personnel of the Department of Health
 12 whose duties are to support the investigation of child
 13 abuse or neglect, and personnel of the Department of
 14 Revenue or local governments whose responsibilities
 15 include revenue collection and enforcement or child
 16 support enforcement; providing for future review and
 17 repeal of the exemption under the Open Government
 18 Sunset Review Act; providing a statement of public
 19 necessity; providing an effective date.
 20
 21 Be It Enacted by the Legislature of the State of Florida:
 22
 23 Section 1. Paragraph (d) of subsection (4) of section
 24 119.071, Florida Statutes, is amended to read:
 25 119.071 General exemptions from inspection or copying of
 26 public records.—
 27 (4) AGENCY PERSONNEL INFORMATION.—
 28 (d)1. For purposes of this paragraph, the term "telephone
 29 numbers" includes home telephone numbers, personal cellular

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 telephone numbers, personal pager telephone numbers, and
 31 telephone numbers associated with personal communications
 32 devices.
 33 2.a.(I) The home addresses, telephone numbers, social
 34 security numbers, dates of birth, and photographs of active or
 35 former sworn or civilian law enforcement personnel, including
 36 correctional and correctional probation officers, personnel of
 37 the Department of Children and Families ~~Family Services~~ whose
 38 duties include the investigation of abuse, neglect,
 39 exploitation, fraud, theft, or other criminal activities,
 40 personnel of the Department of Health whose duties are to
 41 support the investigation of child abuse or neglect, and
 42 personnel of the Department of Revenue or local governments
 43 whose responsibilities include revenue collection and
 44 enforcement or child support enforcement; the home addresses,
 45 telephone numbers, social security numbers, photographs, dates
 46 of birth, and places of employment of the spouses and children
 47 of such personnel; and the names and locations of schools and
 48 day care facilities attended by the children of such personnel
 49 are exempt from s. 119.07(1).
 50 (II) The names of the spouses and children of active or
 51 former sworn or civilian law enforcement personnel identified in
 52 sub-sub-subparagraph a.(I) are exempt from s. 119.07(1) and s.
 53 24(a), Art. I of the State Constitution.
 54 (III) Sub-sub-subparagraph a.(II) is subject to the Open
 55 Government Sunset Review Act in accordance with s. 119.15, and
 56 shall stand repealed on October 2, 2018, unless reviewed and
 57 saved from repeal through reenactment by the Legislature.
 58 b. The home addresses, telephone numbers, dates of birth,

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and photographs of firefighters certified in compliance with s. 633.35; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1).

c. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1).

d. The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e. The home addresses, dates of birth, and telephone

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numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made reasonable efforts to protect such information from being accessible through other means available to the public.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or

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 117 other personnel-related duties; the names, home addresses,
 118 telephone numbers, dates of birth, and places of employment of
 119 the spouses and children of such personnel; and the names and
 120 locations of schools and day care facilities attended by the
 121 children of such personnel are exempt from s. 119.07(1) and s.
 122 24(a), Art. I of the State Constitution.

123 g. The home addresses, telephone numbers, dates of birth,
 124 and photographs of current or former code enforcement officers;
 125 the names, home addresses, telephone numbers, dates of birth,
 126 and places of employment of the spouses and children of such
 127 personnel; and the names and locations of schools and day care
 128 facilities attended by the children of such personnel are exempt
 129 from s. 119.07(1) and s. 24(a), Art. I of the State
 130 Constitution.

131 h. The home addresses, telephone numbers, places of
 132 employment, dates of birth, and photographs of current or former
 133 guardians ad litem, as defined in s. 39.820; the names, home
 134 addresses, telephone numbers, dates of birth, and places of
 135 employment of the spouses and children of such persons; and the
 136 names and locations of schools and day care facilities attended
 137 by the children of such persons are exempt from s. 119.07(1) and
 138 s. 24(a), Art. I of the State Constitution, if the guardian ad
 139 litem provides a written statement that the guardian ad litem
 140 has made reasonable efforts to protect such information from
 141 being accessible through other means available to the public.

142 i. The home addresses, telephone numbers, dates of birth,
 143 and photographs of current or former juvenile probation
 144 officers, juvenile probation supervisors, detention
 145 superintendents, assistant detention superintendents, juvenile

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 146 justice detention officers I and II, juvenile justice detention
 147 officer supervisors, juvenile justice residential officers,
 148 juvenile justice residential officer supervisors I and II,
 149 juvenile justice counselors, juvenile justice counselor
 150 supervisors, human services counselor administrators, senior
 151 human services counselor administrators, rehabilitation
 152 therapists, and social services counselors of the Department of
 153 Juvenile Justice; the names, home addresses, telephone numbers,
 154 dates of birth, and places of employment of spouses and children
 155 of such personnel; and the names and locations of schools and
 156 day care facilities attended by the children of such personnel
 157 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 158 Constitution.

159 j. The home addresses, telephone numbers, dates of birth,
 160 and photographs of current or former public defenders, assistant
 161 public defenders, criminal conflict and civil regional counsel,
 162 and assistant criminal conflict and civil regional counsel; the
 163 home addresses, telephone numbers, dates of birth, and places of
 164 employment of the spouses and children of such defenders or
 165 counsel; and the names and locations of schools and day care
 166 facilities attended by the children of such defenders or counsel
 167 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 168 Constitution.

169 k. The home addresses, telephone numbers, and photographs
 170 of current or former investigators or inspectors of the
 171 Department of Business and Professional Regulation; the names,
 172 home addresses, telephone numbers, and places of employment of
 173 the spouses and children of such current or former investigators
 174 and inspectors; and the names and locations of schools and day

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care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the investigator or inspector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

1. The home addresses and telephone numbers of county tax collectors; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the county tax collector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the

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custodial agency.

4. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

5. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the names of the spouses and children of active or former sworn or civilian law enforcement personnel be exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Sworn and civilian law enforcement personnel in this state perform a variety of important duties that ensure public safety and welfare and encourage safe and civil communities. Correctional and correctional probation officers work with felons, many of whom have committed violent crimes. Personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, and personnel of the Department of Health, work with individuals who may be a danger to their own children and families, as well as the children of others. Personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement investigate and bring enforcement actions against individuals who have failed to pay their lawful taxes or failed to pay to support their children. As a result of their duties, these sworn and civilian law enforcement personnel often come in close

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233 contact with individuals who not only may be a threat to these
234 personnel, but who might seek to take revenge against them by
235 harming their spouses and children. Permitting access to the
236 names of spouses and children of active or former sworn or
237 civilian law enforcement personnel provides a means by which
238 individuals who have been investigated, arrested, interrogated,
239 or incarcerated can identify and cause physical or emotional
240 harm to these spouses and children. The Legislature therefore
241 finds that the harm that may result from the release of the
242 names of spouses and children of such law enforcement personnel
243 outweighs any public benefit that may be derived from the
244 disclosure of the information.

245 Section 3. This act shall take effect October 1, 2013.

ARNOLD.SUE

From: CORNWELL.NANCI
Sent: Monday, February 18, 2013 6:46 PM
To: CANNON.AMANDA; ARNOLD.SUE
Subject: SB 376 PR Exemption for Law Enforcement

Senator Hays asked that I present this bill on his behalf tomorrow as he is tied up in committee and cannot miss an important vote. Could you please let Chair Evers know I will be presenting on the Senators behalf. Thank you.

Nanci Cornwell
Legislative Assistant
D. Alan Hays, DMD
State Senator District 11
850-487-5011

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/19/2013

Meeting Date

Topic Public Records Exemption

Bill Number 376
(if applicable)

Name TIM STANFIELD

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S Monroe
Street

Phone 577 0398

Tallahassee FL 32301
City State Zip

E-mail tstanfield@cpflaw.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/13

Meeting Date

Topic Public Records-

Bill Number 376
(if applicable)

Name Sheriff Susan Benton

Amendment Barcode _____
(if applicable)

Job Title Highlands County

Address Sheriff
Street

Phone _____

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)



The Florida Senate
Committee Agenda Request

To: Senator Greg Evers, Chair
Criminal Justice

CC: Amanda Cannon, Staff Director
Sue Arnold, Administrative Assistant

Subject: Committee Agenda Request

Date: February 5, 2013

I respectfully request that **Senate Bill #376**, relating to Public Records/Children and Spouses of Law Enforcement Personnel, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in dark ink, reading "Alan Hays", is written over a horizontal line. The signature is fluid and cursive.

Senator Alan Hays
Florida Senate, District 11
320 Senate Office Building
(850) 487-5011

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/CS/SB 390

INTRODUCER: Criminal Justice Committee; Military Affairs, Space, and Domestic Security Committee;
and Senator Dean

SUBJECT: Veterans' Organizations

DATE: February 19, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ryon	Ryon	MS	Fav/CS
2.	Clodfelter	Cannon	CJ	Fav/CS
3.			JU	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... ☒ Statement of Substantial Changes
B. AMENDMENTS..... ☐ Technical amendments were recommended
☐ Amendments were recommended
☐ Significant amendments were recommended

I. Summary:

CS/CS/SB 390 allows a veterans' organization to sue a business entity that holds itself out as a veterans' organization if it has reason to believe that the business entity does not operate primarily for the financial benefit and moral support of veterans and their families. The bill gives the business entity the burden of proof of showing, by clear and convincing evidence, that it does operate primarily for the financial benefit and moral support of veterans and their families. Upon an adverse adjudication, the court must issue an injunction ordering the business entity to cease and desist its business practices while holding itself out as a veterans' organization. In addition, the court may impose a civil penalty of up to \$500 and require payment of court costs and reasonable attorney fees incurred by the plaintiff.

The bill provides that a business entity that unlawfully holds itself out as a veterans' organization commits a misdemeanor of the first degree.

The bill also amends s. 817.312, F.S., which prohibits persons from misrepresenting themselves as a current member or veteran of the United States military and wearing a uniform, medal or insignia that is authorized for use by members or veterans of the U.S. military while soliciting for

charitable contributions. The bill amends the statute to apply when the person is either misrepresenting himself or herself as a servicemember or veteran or is wearing a military uniform, medal, or insignia which he or she is not authorized to wear. In addition, the prohibited activity is expanded to include misrepresentation or improper wear for the purpose of material gain.

The bill creates an unnumbered section and amends section 817.312 of the Florida Statutes.

II. Present Situation:

Veterans' organizations, also referred to as veterans' service organizations, are non-profit groups that advocate for and assist veterans, while also providing opportunities for veterans to get involved with the larger community. Their particular roles and activities vary. While the term "veterans' organization" is not defined in Florida Statutes in a broad context, these organizations are treated in much the same way as other charitable and non-profit organizations.

Congressionally-Chartered Veterans' Organizations

Title 36 of the U.S. Code lists national or patriotic non-profit corporations who have been granted corporate charters by act of Congress and whose primary purpose is to promote patriotic, charitable, educational, or other eleemosynary activities.¹ Many of these organizations are military veteran services oriented organizations. The corporations listed in Title 36 are not agencies of the United States, and the charter does not assign any governmental attributes.² The attraction of Title 36 status for national organizations is that it tends to provide an "official" imprimatur to their activities and, to the extent, it may provide them prestige and indirect financial benefit.

Currently, federal supervision of congressionally chartered non-profit organizations is limited. All "private corporations established under federal law," as defined and listed in Subtitle II,³ are required to have independent audits annually, and to have the reports of the audits submitted to Congress.⁴ Such organizations are also required to submit annual reports of their activities to Congress.

Nationally Recognized Veterans' Organizations

The U.S. Department of Veterans Affairs (USDVA) is authorized to recognize certain veterans' organizations as national organizations for the purpose of assisting claimants for USDVA benefits in the preparation, presentation, and prosecution of their claims.⁵ A veterans' organization may be recognized as a national organization if it satisfies specified criteria, which requires that a veterans' organization:

¹ These entities are referred to as "Title 36 corporations" because they are found in Title 36 of the U.S. Code.

² CRS Report for Congress, Congressionally Charters Non-profit Organizations ("Title 36 Corporations"): What They Are and how Congress Treats Them; Updated April 8, 2004; Ronald C. Moe, Consultant in American National Government. page 5.

³ 36 U.S.C. Subtitle II

⁴ 36 U.S.C. s. 10101

⁵ 38 U.S.C. s. 5902

- Has a primary purpose of serving veterans;
- Demonstrates a substantial service to veterans;
- Commits a significant portion of its assets to veterans' services and has adequate funding to properly perform those services; and
- Maintains capability of providing complete claims service to each claimant requesting representation.⁶

In addition, a nationally recognized organization must have the capability and resources to provide representation to a sizeable number of claimants, must be geographically diversified (i.e., one or more posts in at least 10 states), and in the case of membership organizations, must maintain a membership of 2,000 or more persons.⁷

The USDVA maintains a directory of congressionally chartered and non-chartered veterans' organizations recognized as national organizations.⁸ This directory also includes other congressionally chartered and non-chartered veterans' organizations that are not recognized by the USDVA as national organizations, but which represent the interest of American veterans.

Annual Registration with Department of Agriculture and Consumer Services

Veterans' organizations that intend to solicit donations in Florida must register with the Florida Department of Agriculture and Consumer Services (DACS). Florida's Solicitation of Contributions Act requires charitable organizations that engage in solicitation activities in Florida to register with the DACS and provide certain financial and background information as well as pay initial and annual renewal fees.⁹ Registration statements must contain prescribed information¹⁰ and be accompanied by the appropriate fee.¹¹ Veterans' organizations that have been granted a federal charter under Title 36, U.S.C., are exempt from the DACS registration requirements.¹²

While the DACS does not oversee the activities of the organizations that are required to register with the DACS, it does monitor an organization's activities to ensure compliance with the requirements in the Solicitation of Contributions Act. In addition, the DACS provides information to the public on the organizations registered to solicit contributions in Florida via the DACS's Gift Givers' Guide.¹³

Federal and State Tax Exemptions for Veterans' Organizations

Depending on its organization or purpose, a veterans' organization may be recognized as tax exempt from federal income tax under the following sections of the Internal Revenue Code:

⁶ 38 CFR s. 14.628

⁷ *Id.*

⁸ U.S. Department of Veterans Affairs. *Veterans and Military Service Organizations (Directory)*. Available at: http://www1.va.gov/vso/VSO-Directory_2012-2013.pdf

⁹ Chapter 496, F.S.

¹⁰ Section 496.405(2), F.S.

¹¹ Section 496.405(4)(a), F.S.

¹² Section 496.406(3), F.S.

¹³ Florida Department of Agriculture and Consumer Services. *Florida Charities Gift Givers' Guide*. Available at: <https://csapp.800helpfla.com/cspublicapp/giftgiversquery/giftgiversquery.aspx>

- 501(c)(19) – veterans’ organizations
- 501(c)(4) – social welfare organizations
- 501(c)(7) – social clubs
- 501(c)(8) – fraternal beneficiary societies
- 501(c)(10) – domestic fraternal societies
- 501(c)(2) – title holding corporations¹⁴

Veterans’ organizations have to meet specified criteria in order to be granted tax exempt status under the Internal Revenue Code. For example, section 501(c)(19), I.R.C., provides for an exemption from federal income tax for an organization of past or present members of the United States Armed Forces if:

- It is organized in the United States;
- At least 75% of its members are past or present members of the U.S. Armed Forces;
- Substantially all of its other members are individuals who are cadets or are spouses, widows, widowers, ancestors or lineal descendants of past or present members of the U.S. Armed Forces or of cadets; and
- No part of the net earnings of which inures to the benefit of any private shareholder or individual.

Florida law exempts qualified veterans’ organizations from tax on sales and leases, when used in carrying out customary veterans’ organization activities.¹⁵ Veterans’ organizations that qualify for this exemption are those that are nationally chartered or nationally recognized as a veterans’ organization, which holds a current exemption under s. 501(c)(4) or (19) of the Internal Revenue Code. Additionally, under s. 220.22(4), F.S., certain veterans’ organizations are exempt from state corporate income tax in Florida.

Civil and Criminal Actions

Organizations that solicit contributions for charitable purposes, including veterans’ organizations, are subject to the requirements of chapters 496 and 501, F.S. Chapter 496, F.S., specifically governs solicitation of funds. Section 496.419, F.S., gives the DACS authority to investigate violations of chapter 496, F.S., and to bring administrative action against individuals and entities that violate the solicitation requirements. The DACS can issue cease and desist orders and assess fines of up to \$500 per act or omission for 501(c)(3) organizations and up to \$1000 per act or omission for other individuals or entities. In addition, the DACS is required to report criminal violations of Chapter 496, F.S., to the prosecuting authority. Willful and knowing violation of ss. 496.401-495.424, F.S., is a third degree felony for the first offense and a second degree felony for subsequent offenses.¹⁶

Section 496.416, F.S., provides that violation of any provision of ss. 496.401-495.424, F.S., is also an unfair or deceptive act or practice or an unfair method of competition in violation of chapter 501, part II of the Florida Statutes (the “Florida Deceptive and Unfair Trade Practices

¹⁴ Internal Revenue Service. *Tax Guide: Veterans’ Organizations*. Available at: <http://www.irs.gov/pub/irs-pdf/p3386.pdf>

¹⁵ Section 212.08(7)(n), F.S.

¹⁶ Section 496.417, F.S. A third degree felony is punishable by imprisonment for not more than 5 years and a fine of up to \$5000. A second degree felony is punishable by imprisonment for not more than 15 years and a fine of up to \$5000.

Act”). Violations of the Florida Deceptive and Unfair Trade Practices Act are enforced by either the appropriate state attorney or the Department of Legal Affairs (Attorney General’s Office). Available civil remedies include cease and desist orders and civil penalties of up to \$10,000 per violation.¹⁷

In addition to action taken by an enforcing authority, s. 501.211, F.S., authorizes anyone who has been aggrieved by a practice that is in violation of the Florida Deceptive and Unfair Trade Practices Act to bring a civil action against the violator. In such an action, the aggrieved party can obtain injunctive relief, recover any actual damages, and be awarded attorney fees and court costs. However, the defendant may be awarded attorney fees and court costs if it prevails in defending the claim.

Section 817.312, F.S., provides that it is a third degree felony for a person to solicit for charitable contributions while both: (1) misrepresenting himself or herself as a member or veteran of the United States Air Force, United States Army, United States Coast Guard, United States Marine Corps, United States Navy, or National Guard (hereinafter referred to as “the United States military”); and (2) wearing the uniform of or any medal or insignia authorized for use by members or veterans of the United States military.

III. Effect of Proposed Changes:

Section 1: This section of the bill defines a veterans’ organization as “an organization which exists primarily to benefit veterans or their families.” It allows a veterans’ organization whose membership is limited to veterans and their families to bring a civil action for an injunction against a business entity that holds itself out as a veterans’ organization but does not operate primarily for the financial benefit and moral support of veterans and their families. The bill places the burden of proof on the business entity to show by clear and convincing evidence that it does in fact operate primarily for the financial benefit and moral support of veterans and their families.

In addition to issuing an injunction prohibiting the business entity from continuing its business practices while holding itself out as a veterans’ organization, the court may impose a civil penalty of up to \$500 and award court costs and reasonable attorney’s fees to the plaintiff.

In many cases, actions that are proscribed in the bill would also violate chapters 496 or 501, F.S., but the violation might not prompt action by government entities charged with enforcing those chapters. It is also not clear that a veterans’ organization would be an “aggrieved party” which could bring an individual action under s. 501.211, F.S. The bill provides a legal mechanism for legitimate veterans’ organizations to stop misrepresentation and solicitation by purported veterans’ organizations.

The bill also provides that it is a first degree misdemeanor for a business entity to hold itself out as a veterans’ organization if it does not in fact operate primarily for the financial benefit and

¹⁷ Section 501.2077, F.S., provides for an enhanced civil penalty of up to \$15,000 per violation if the illegal practice victimized senior citizens or handicapped persons.

moral support of veterans and their families. First degree misdemeanors are punishable by a fine of up to \$1000 and, if the defendant is a natural person, imprisonment for up to one year.

It is possible that a business entity's actions that violate this bill's provisions could also violate other statutes of more general applicability, such as the criminal provisions of Chapter 496, F.S. The bill includes language to ensure that the new statute does not preclude bringing any civil or criminal action that may be available under an existing statute.¹⁸

Section 2: This section of the bill amends s. 817.312, F.S., in several ways:

- It prohibits soliciting for charitable contributions while either misrepresenting that one is a member or veteran of the United States military or while wearing the uniform of or any medal or insignia that is authorized for wear by members or veterans of the United States military. Currently, the statute prohibits a person from soliciting for charitable contributions while misrepresenting military or veteran status if the person is wearing a US military uniform, medal, or insignia at the time.
- It expands the scope of the criminal offense to include misrepresenting military status or wearing a United States military uniform, medal or insignia “for the purpose of material gain.”
- It provides that a person does not violate the statute for wearing a US military uniform, medal, or insignia that he or she is authorized to wear, or if the person is an actor engaged in a theatrical production.

Unlike s. 250.43, F.S., which prohibits the wear of a United States military uniform, any part of such uniform, or any similar uniform, s. 817.312, F.S., does not prohibit the wear of part of a uniform (except for medals or insignia which the person is not authorized to wear) or a uniform that is similar to a United States military uniform. In *State v. Montas*, 993 So.2d 1127 (Fla. 5th Dist. 2008), the court pointed out that these provisions of s. 250.43, F.S., would prohibit a child from wearing his parent's Army boots or a person wearing an imitation military uniform for Halloween.¹⁹

Effective date: The bill provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁸ See *State v. Maloy*, 823 So.2d 815 (Fla. 1st Dist. 2002), which recognized “the principle of criminal law which ordinarily gives controlling effect to the particular and specific statutory proscriptions addressing acts which otherwise might also be circumscribed by more general criminal provisions.”

¹⁹ In *Montas*, s. 250.43, F.S., was found to be unconstitutional because its provisions banned both protected and unprotected speech. The constitutional implications of this bill are discussed in Section IV, Constitutional Issues.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill amends s. 817.312, F.S., to prohibit misrepresentation of military status or wearing a United States military uniform, medal, or insignia without authorization while soliciting for charitable contributions or for the purpose of material gain. This raises questions of whether such restrictions violate the Free Expression Clause of the First Amendment of the United States Constitution. For the reasons discussed below, it appears that the restrictions are constitutional.

The issue of misrepresentation of military service was recently considered by the United States Supreme Court. In *United States v. Alvarez*, 132 S. Ct. 2537 (2012), the Court considered the case of an official who was convicted of violating the Stolen Valor Act, 18 U.S.C. § 704(b), for falsely stating at a public meeting that he was a recipient of the Congressional Medal of Honor. The Court found that the Stolen Valor Act, which made it a crime to lie about receiving military medals or honors, violated the First Amendment's guarantee of the right to free speech. In considering whether the conduct prohibited by the statute was protected speech, the Court noted that "The statute seeks to control and suppress all false statements on this one subject in almost limitless times and settings. And it does so entirely without regard to whether the lie was made for the purpose of material gain." *Alvarez* at 2547. The Court also noted: "Where false claims are made to effect a fraud or secure moneys or other valuable considerations, . . . , it is well established that the Government may restrict speech without affronting the First Amendment." *Alvarez* at 2547. Because this portion of s. 817.312, F.S., will prohibit misrepresentation of military status only in connection with soliciting for charitable contributions or for the purpose of material gain, it does not impermissibly infringe on First Amendment rights.

The prohibition against unauthorized wear of a military uniform, medal, or insignia is subject to similar analysis. As previously noted, the Fifth Circuit Court of Appeals found that the prohibition in s. 250.43, F.S., against wearing a United States military uniform, any part of such uniform, or any similar uniform was unconstitutionally broad.²⁰ The court focused on the fact that s. 250.43, F.S., did not include specific intent to deceive as an element of the offense, and that there was no way for it to narrowly interpret the statute to include such an element. This focus on "intent to deceive" is consistent with the reasoning in *United States v. Perelman*, 695 F.3d 866 (9th Cir. 2012) which upheld 18 U.S.C. § 704(a) against a challenge that its prohibition against unauthorized wear of United States military medals or decorations was overbroad on its face and thus unconstitutional. In that case, the federal appellate court found that it could interpret the statute to reflect Congressional intent that it required "intent to deceive," even though such intent was not explicitly stated.

²⁰ See *State v. Montas*, 993 So.2d 1127 (Fla. 5th Dist. 2008).

Unlike s. 250.43, F.S., the bill's amendment to s. 817.312, F.S., would prohibit unauthorized wear of a United States military uniform, medal, or insignia only in limited circumstances. The restriction of the prohibition to times when the wearer is soliciting for charitable contributions or is seeking material gain indicates that it is intended to prevent deception of potential donors or benefactors. It is likely that this portion of the statute would be upheld against a First Amendment challenge because it regulates an implicit misrepresentation for the purpose of material gain. However, addition of specific "intent to deceive" language would clarify the purpose of the statute.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Organizations that misrepresent themselves as operating primarily for the benefit of veterans and their families are subject to a civil penalty of up to \$500 and payment of the plaintiff's attorney's fees and court costs. If found guilty of the newly created first-degree misdemeanor offense, they are subject to a potential fine of up to \$1,000.

The impact of the amendments to s. 817.312, F.S., on prison bed space needs has not yet been considered by the Criminal Justice Estimating Conference.

C. Government Sector Impact:

The Office of the State Courts Administrator notes a probable, though indeterminate, increase in judicial time and court workload associated with the new civil and criminal processes.²¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²¹ Office of State Courts Administrator. 2013 Judicial Impact Statement for SB 390.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Criminal Justice on February 19, 2013:

- Clarifies that Section 1 of the bill applies to any business entity falsely holding itself out as a veterans' organization and that it is intended to be additional to existing statutory remedies.
- Reorganizes Section 1 to combine the elements of the criminal offense and the criminal penalties in the same subsection of the new statute.
- Amends s. 817.312, F.S., to expand the scope of the existing criminal offense that prohibits misrepresentation of military or veteran status and wear of a military uniform, medal, or insignia while soliciting for charitable contributions.

CS by Military Affairs, Space, and Domestic Security on February 6, 2013:

The Committee Substitute reorganizes and modifies the bill to address technical issues.

- B. **Amendments:**

None.



153738

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2013	.	
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	.	

The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment

Delete lines 15 - 42
and insert:

Section 1. (1) As used in this section, the term:

(a) "Business entity" means any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, individual, or trust, whether fictitiously named or not, doing business in this state.

(b) "Veteran" has the same meaning as in s. 1.01, Florida Statutes.

(c) "Veterans' organization" means an organization which



153738

13 exists primarily to benefit veterans or their families.

14 (2) Any veterans' organization whose membership is limited
15 to veterans and their families that has reason to believe that a
16 business entity that holds itself out as a veterans'
17 organization does not in fact operate primarily for the
18 financial benefit and moral support of veterans or their
19 families may bring a civil action in a court of competent
20 jurisdiction for an injunction prohibiting the offending
21 business from continuing its business practices while holding
22 itself out as a veterans' organization. The court may also
23 impose a civil penalty of up to \$500 against the defendant and
24 award court costs and reasonable attorney fees to the plaintiff.

25 (3) In a civil action brought under subsection (2), the
26 defendant has the burden of proof to show by clear and
27 convincing evidence that it does in fact operate primarily for
28 the financial benefit and moral support of veterans or their
29 families.

30 (4) A business entity that knowingly and intentionally
31 represents itself as a veterans' organization but that does not
32 in fact operate primarily for the financial benefit and moral
33 support of veterans or their families commits a misdemeanor of
34 the first degree, punishable as provided in s. 775.082 or s.
35 775.083, Florida Statutes.

36 (5) This section does not affect the availability of any
37 other civil or criminal action or the imposition of any other
38 civil remedy or criminal penalty that is authorized by another
39 statute.



803982

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/19/2013	.	
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	.	

The Committee on Criminal Justice (Evers) recommended the following:

Senate Amendment (with title amendment)

Between lines 42 and 43
insert:

Section 2. Subsection (1) of section 817.312, Florida
Statutes, is amended to read:

817.312 Unlawful use of uniforms, medals, or insignia.—
(1) A person may not misrepresent himself or herself as a member
or veteran of the United States Air Force, United States Army,
United States Coast Guard, United States Marine Corps, United
States Navy, or National Guard and wear the uniform of or any
medal or insignia authorized for use by members or veterans of



803982

the United States Air Force, United States Army, United States Coast Guard, United States Marine Corps, United States Navy, or the National Guard while soliciting for charitable contributions or for the purpose of material gain. This section does not prohibit persons in the theatrical profession from wearing such uniforms, medals, or insignia while actually engaged in such profession.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 11

and insert:

penalties; amending s. 817.312, F.S.; prohibiting misrepresentation as a service member or veteran and wearing military or veterans' uniform, medal, or insignia; providing an effective date.



899592

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2013	.	
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	.	
	.	

The Committee on Criminal Justice (Evers) recommended the following:

Senate Substitute for Amendment (803982) (with title amendment)

Between lines 42 and 43
insert:

Section 2. Subsection (1) of section 817.312, Florida Statutes, is amended to read:

817.312 Unlawful use of uniforms, medals, or insignia.—
(1) A person may not misrepresent himself or herself as a member or veteran of the United States Air Force, United States Army, United States Coast Guard, United States Marine Corps, United States Navy, or National Guard or ~~and~~ wear the uniform of or any



899592

medal or insignia authorized for use by members or veterans of the United States Air Force, United States Army, United States Coast Guard, United States Marine Corps, United States Navy, or the National Guard which he or she is not authorized to wear while soliciting for charitable contributions or for the purpose of material gain. This section does not prohibit persons in the theatrical profession from wearing such uniforms, medals, or insignia while actually engaged in such profession.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 11

and insert:

penalties; amending s. 817.312, F.S.; prohibiting misrepresentation as a service member or veteran and wearing military or veterans' uniform, medal, or insignia; providing an effective date.

By the Committee on Military Affairs, Space, and Domestic Security; and Senator Dean

583-01567-13

2013390c1

A bill to be entitled

An act relating to veterans' organizations; defining terms; prohibiting a business entity from holding itself out as a veterans' organization under certain circumstances; authorizing an affected veterans' organization to bring a civil action in a court of competent jurisdiction against the offending business entity; authorizing the court to impose a civil penalty of up to \$500 and payment of court costs and reasonable attorney fees; providing for criminal penalties; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) As used in this section, the term:

(a) "Business entity" means any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

(b) "Veteran" has the same meaning as in s. 1.01, Florida Statutes.

(c) "Veterans' organization" means an organization whose membership is limited to veterans and their families and which exists primarily to benefit veterans.

(2) Any veterans' organization that has reason to believe that a business entity that holds itself out as a veterans' organization does not in fact operate primarily for the financial benefit and moral support of veterans and their families may bring a civil action in a court of competent

583-01567-13

2013390c1

jurisdiction against the offending business entity to cease and desist its business practices while holding itself out as a veterans' organization. Upon an adverse adjudication, the court also may impose a civil penalty of up to \$500 and payment of court costs and reasonable attorney fees incurred by the plaintiff. In such an action, the defendant has the burden of proof to show clear and convincing evidence that it does in fact operate primarily for the financial benefit and moral support of veterans and their families.

(3) A business entity that knowingly and intentionally violates subsection (2) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

Section 2. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/13

Meeting Date

Topic VETERANS ORGANIZATIONS

Name MIKE PRENPERBAST

Job Title EXECUTIVE DIRECTOR, FDVA

Address THE CAPITOL
Street

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing FDVA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

Bill Number SB 390
(if applicable)

Amendment Barcode _____
(if applicable)

Phone 850-497-1533

E-mail _____

CourtSmart Tag Report

Room: LL 37

Case:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 2/19/2013 9:34:13 AM

Ends: 2/19/2013 9:59:40 AM

Length: 00:25:28

9:34:29 AM Meeting to order
9:35:02 AM Roll call
9:35:18 AM Tab 2 - SB 338 (Senator Simpson) Rachel Rogers presenting
9:40:46 AM Roll call on 338
9:41:17 AM Tab 3 - SB 376 (Senator Hays) Nanci Cornwell presenting
9:42:27 AM 366616 by Senator Dean
9:43:57 AM Roll call on 376
9:44:52 AM Tab 1 - SB 118 (Senator Benacquisto) Matthew Hunter presenting
9:45:45 AM 203006 by Senator Dean
9:50:41 AM Roll call on CS/SB 118
9:51:08 AM Tab 4 - CS/SB 390 by Senator Dean
9:51:58 AM 153738 by Senator Dean
9:52:39 AM Senator Evers asks Sen. Smith to take Chair
9:53:03 AM 803982 by Senator Evers
9:53:14 AM 899592 by Senator Evers (Substitute for 803982)
9:55:29 AM Turns Chair back over to Senator Evers
9:58:35 AM Roll call on CS/CS/SB 390
9:59:22 AM Move to rise